



Mike Huckabee
Governor

Winter/Spring 2003

The AID

Newsletter

**Insurance News from the
ARKANSAS INSURANCE DEPARTMENT**
We Work For You!



Mike Pickens
Commissioner

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Calling It Like It Is: Civil Justice Reform

One of the most important issues our state legislature will address during the 2003 session is "tort reform." I prefer the term "civil justice reform," because what is at stake is nothing less than ensuring the integrity of our system of civil justice, as well as our fundamental rights of access to the courts and a fair trial. As state insurance commissioner, here are some facts I respectfully offer for the consideration of my fellow citizens and their elected representatives.

Like their counterparts in many other states, Arkansas doctors and hospitals are reporting increases of 50%-150% in their medical malpractice premiums. Some medical care providers, particularly obstetricians/gynecologists and emergency room doctors, report the steep increases are causing them to stop practicing in these vital areas, leaving patients out in the cold. Like their colleagues across the country, they cite the inequities and excesses of our civil justice system as the primary reason for these problems. The United States government agrees.

A September 25, 2002, study by the United States Department of Health and Human Services entitled "Special Update on Medical Liability Crisis,"

found "[t]he cost of the excesses of the litigation system are reflected in the rapid increases in the cost of medical malpractice coverage. Premiums are spiking across all specialties in 2002...the new information further demonstrates that the litigation system is threatening health care quality for all Americans as well as raising the costs of health care for all Americans." This report goes on to note that "[r]ates are rising fastest in states without reasonable limits on non-economic damages," which include pain and suffering and punitive damages. This study reports that in 2002, "[s]tates without reasonable limits on non-economic damages have experienced the largest increases by

far," between 36%-113%. This study lists Arkansas as having the second-highest premium increases in the "non-reform states" at 112%. Only Virginia was higher at 113%. Mississippi, which just this fall passed significant, across-the-board civil justice reform, was reported with premium increases of 99%. The report lists Arkansas with the highest average premium increase of all "non-reform states" in the nation at 64%.

Significantly, the federal government study reports that "[p]hysician premiums are lower in states that have reformed their litigation system." The study compares physician premiums by specialty in states that have not reformed their civil jus-

tice systems to California, which implemented reasonable caps on non-economic damages in the mid-'80s. The report demonstrates California premium increases have been much lower than those in the non-reform states.

Even with these high premium increases, insurers are losing large amounts of money and choosing not to do business in many states, particularly those deemed to be "non-reform states" like Arkansas. In 2001, the loss ratio for medical malpractice in Arkansas was 161%, compared to a nationwide figure of 98%. This means that, in Arkansas, medical malpractice insurers are paying-out \$1.60 in claims and expenses for every \$1.00 they collect in premiums. No business can survive such devastating losses. These high claims and expense pay-outs, coupled with the downturn in the stock market and economy as well as the instability in the insurance marketplace caused by terrorism and other issues, make the problem worse. These facts and figures may seem boring, but there are people behind those numbers -- you and me. Much like government, the only money insurers have with which to pay claims is your money and

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For more information, visit our web site at www.state.ar.us/insurance.

The Arkansas Insurance Department is located at 1200 West Third Street (the corner of Third and Cross Streets) in Downtown Little Rock, Arkansas. The purpose of the State Insurance Department is to serve and protect the public interest by the equitable enforcement of Arkansas laws impacting the insurance industry. Our primary mission shall be consumer protection through insurer solvency and market conduct regulation, and fraud prosecution and deterrence.



Calling It Like It Is: Civil Justice Reform (cont.)

my money. We taxpayers and consumers pay all the costs, financial and otherwise.

At this time, there are approximately less than five (5) medical malpractice insurers actually willing to write business in Arkansas. A November 2001 hearing at the Arkansas Insurance Department found that, out of eighty (80) insurers who were licensed to write nursing home liability insurance in our state, only five (5) had products filed with the Department. Two (2) of these five (5) insurers had products filed but had no business due to tight underwriting guidelines; one (1) had policies in force but was not renewing them or accepting new business; one (1) had policies in force and was selectively renewing them based on the quality of the risk. Though there were some non-admitted, or surplus lines, carriers willing to write some business, their policies contained a number of exclusions that made them less attractive to consumers. In our October 1, 2001, Order this Depart-

ment warned that the affordability and availability problems in the area of nursing home liability insurance could expand to other lines of insurance, most notably medical malpractice insurance, and we asked the legislature to conduct an interim study of civil justice reform. Insurers have indicated to the Department they would need to see some significant reform of our civil justice system before they would be willing to write more business in Arkansas.

As reported in the Arkansas Democrat-Gazette, a 2001 study by the United States Chamber of Commerce listed Arkansas as having one of the most unfavorable civil justice climates in the country. Whether or not this perception is accurate, it is disturbing to those of us who support economic development, and better and higher-paying jobs for Arkansans.

--Commissioner Mike Pickens

African Americans Due Settlement from Metropolitan Life

A benefits regulatory settlement has been reached between New York-based Metropolitan Life Insurance companies and the Arkansas Insurance Department, which could affect more than 13,000 African Americans in the State of Arkansas. The settlement comes as a result of an agreement between Metropolitan Life (MetLife) and the 50 states, in conjunction with the National Association of Insurance Commissioners' (NAIC) resolution, which stems from allegations the company charged a higher premium to African Americans and non-Caucasians who purchased life policies from the company before 1973.

The benefits offered under the settlement include cash, or other provisions such as increased insurance value for policies still in effect.

"We're doing all we can to get the word out to Arkansans who believe they may be due benefits under this settlement plan," Insurance Commissioner Mike Pickens said. "We want to be sure everyone receives any benefits or money they may be entitled to receive."

The policies, some of which were sold door-to-door before 1973, are not required to still be in force to qualify for benefits, according to settlement instructions. However, claims to receive any benefits under the settlement must be filed with Metropolitan no later than April 23, 2003.

According to the terms of the settlement, anyone who believes they were ever insured, ever owned, or was paid a death benefit under a Metropolitan life policy issued prior to 1973 to insure the life of an African American or non-Caucasian can file a claim under this settlement plan. It is important to note that filing a claim does not necessarily mean benefits will be paid.

Approximately 13,000 Metropolitan life policies in Arkansas may be affected by the settlement, insurance officials said. The Company could pay more than \$800,000 in benefits to those Arkansas-issued policies.

Consumers with questions may call the Arkansas Insurance Department's Consumer Services Division at 1-800-852-5494 or visit the Metropolitan settlement site at www.lifeseattle.com. Consumers may also call the Metropolitan settlement office at 1-800-960-2381.

Commissioner Pickens Heads National Group

State Insurance Commissioner Mike Pickens was elected president of the National Association of Insurance Commissioners (NAIC) by acclamation during the organization's Winter meeting in San Diego, California. Commissioner Pickens, who served as vice-president of the organization during 2002, and secretary-treasurer in 2001 will lead this national group of state insurance regulators for the calendar year 2003.

"I'm honored to have been elected president by all my peers throughout the country," Commissioner Pickens said. "I will continue working with all constituencies to conquer the challenges we face in state-based regulation. I will do all I can to make sure state-based regulation is effective, efficient, and successful for all of us insurance consumers."

The National Association of Insurance Commissioners, founded in 1871, is the oldest association of state officials. Its mission is to protect insurance consumers and assist in maintaining the financial stability of the insurance industry. Its members consist of insurance regulators from the 50 states, the District of Columbia and four U.S. territories.

Other elected NAIC officers serving the 2003 term include vice-president Ernst Csiszar, Director of the South Carolina Department of Insurance; and secretary-treasurer Joel Ario, Administrator for the Oregon Department of Insurance.

Commissioner Pickens was appointed by Governor Mike Huckabee in 1997 and is currently serving his second four-year term. In addition to serving as an officer of the NAIC, he also serves on a number of the organization's working committees including Financial Regulation Standards and Accreditation, Information Systems, and the Anti-Fraud Task Force.

Commissioner Pickens is only the third Arkansas insurance commissioner to serve as NAIC president since the organization's inception in 1871. He joins former state insurance commissioners and NAIC presidents W.H.L. "Bill" Woodyard III, who served from 1976-1982 and Lee Douglass, who served from 1990-1996.

Commissioner's Comments



New Year Brings New Opportunities

The 2003 Arkansas Legislative Session may prove to be one of the most aggressive in recent history, presenting bills that will bring new opportunities to many Arkansans.

A part of my role as your State Insurance Commissioner is to ensure that our insurance laws keep step with the ever-changing industry. This year we expect to present several laws to the General Assembly, which are designed to strengthen current laws and address new issues.

Following is an example of some of the new legislation the Arkansas Insurance Department will propose (See this issue of *The AID Newsletter* for more details):

Illegal Health Plans (MEWA)

This bill will give the Arkansas Insurance Department more authority to shut down unauthorized entities. Under this proposed bill, anyone who knowingly sells an unauthorized insurance product shall be found guilty of a felony. Those who sell these unauthorized products shall be personally responsible for any damage resulting from that sale.

Key Man Policies

It has been a long-standing practice for some businesses to purchase life insurance on its high-level employees. There has been a recent trend by some employers to purchase this kind of coverage for lower-salaried employees. This proposed amendment prevents employers from insuring an

employee without the employee's consent.

Material Change Notice

Among other things, this amendment will require 30 day notice to the insured of any premium increase which exceeds 10%.

Fire Protection Ratings

This bill proposes an amendment to require insurers to consider fire protection when developing rates.

Credit Scoring

This bill provides comprehensive guidelines to insurers on the filing and disclosure requirements for the use of credit scoring. It prohibits the use of credit scoring as the sole reason to decline to issue or renew an insurance policy.

As your state-based insurance regulator, we commit to our continued efforts to uphold our mission of consumer protection.



Commissioner Mike Pickens

Arkansas Lands First Captive Insurer

State Insurance Commissioner Mike Pickens announced recently the formation of Arkansas's first captive insurer, AMC Re, which was formed by American Management Corporation (AMC), a Conway insurance agency. The new company will reinsure risks written or placed by its parent company, AMC.

Captive insurance companies, which traditionally have operated off shore, provide more flexibility and control than a traditional insurance company. A captive insurance company only insures particular groups, such as a parent company and its subsidiaries or members of an association. Since these companies are generally owned and controlled by the companies they insure, they are not regulated as strictly as insurers that sell on the open market. Due to the hardening insurance market, more and more businesses are turning to captive companies to fulfill insurance coverage needs.

"It just makes sense to give companies the option to set up captives here at home, as opposed to going out of the state or country," said Steve Strange, AMC president and CEO.

The Arkansas General Assembly passed in 2001 Act 1428, which provides for the licensing and regulation of captive insurance companies. The captive law allows for several captive options.

"We are very excited about the development of this new company," Commissioner Pickens said. "We believe our captive laws will prove to be beneficial to the economic growth of the State of Arkansas."

Arkansas captive law requires portions of captive company assets to be reinvested in bonds and securities. Those investments would be used by the State or local community to support hospitals, and other improvement projects.



2003 Legislative Proposals

The 2003 legislative session is upon us and it will be a busy, significant and important one. Among the most significant issues the legislature is expected to address are reform of our civil justice and education systems, the state budget and economic development incentives. The Arkansas Insurance Department will also ask legislators to pass some important, pro-consumer legislation, including the following:

1. **AUTO TOTAL LOSS SALES TAX:** Although current law requires payment of sales taxes on total loss settlements, it is unclear as to whether this requirement is applicable to both first and third party claimants. This proposed bill will amend the statute to clarify that sales taxes shall be paid in auto total loss settlements in first party claims.
 2. **CONSUMER CHOICE:** This proposed bill modifies the Arkansas Health Insurance Consumer Choice Act, ACA 23-79-803, which is designed to allow the sale of health policies which do not contain ALL state-mandated health benefits. The proposed modification removes from the statute the requirement that each individual be required to reject in writing any state mandated health benefit plan and places the notice and rejection requirements in rules and regulations as promulgated by the Commissioner. The Bill also eliminates the yearly reporting requirement on the number of policies written in the state.
 3. **CREDIT SCORING:** Many insurers use Credit scoring as a tool to rate and/or underwrite. This Bill provides comprehensive guidelines to insurers on filing and disclosure requirements in connection with the use of credit scores and prohibits the use of credit scoring as the sole reason to decline to issue or refuse to renew an insurance policy.
 4. **EMPLOYEE HEALTH CANCELLATION:** When an employer fails to timely remit to the carrier the premium on a group health insurance plan, employees are sometimes losing rights (to portability, waiver of pre-existing condition exclusions, etc.) and can find their HIPAA or CHIPs eligibility impacted, all because the employees are not receiving timely notice of cancellations. This proposed bill prohibits accident and health insurers from retroactively terminating group health plans for non-payment of premiums more than 60 days from the date notice of cancellation is received by the insured. The proposed bill also modifies the Arkansas Health Insurance Portability and Accountability Act of 1997 (state "HIPAA") as it modifies the creditable coverage calculation time period in ACA 23-86-304(c)(1)(A) by requiring advance written notice of cancellation of the health plan to the **employee** before the 63 day period begins to run.
 5. **FIRE-PROTECTION RATINGS:** Traditionally insurers have used "public protection classes" developed by an insurance advisory organization as one of the components when developing a rate for specific areas. These protection classes have been developed using a variety of factor, including the capabilities of the fire department providing primary protection for the structures in the area in question. Use of these protection classes, and consequently the capabilities of responding fire departments is not mandatory under Arkansas' rating law. This bill would amend Arkansas Code Ch 88's General Provisions to require insurers to take fire protection into consideration in rating.
 6. **HIPG:** The Health Insurance Purchasing Group Act was passed two years ago in an effort to increase the availability of health insurance to small groups. This proposed bill modifies the Small Employer Purchasing Group Act, ACA 23-86-505. The proposed modification changes the requirement that each individual employee be required to reject in writing any state mandated health benefit done through a Health Insurance Purchasing Group, and places the notice and rejection requirements to those as may be established by Rules and Regulation of the Department.
 7. **MASTECTOMY:** Federal law requires specific benefits to a patient who has undergone a mastectomy. This bill amends Arkansas law to include among other things: reconstruction of the breast on which the mastectomy was performed; surgery and reconstruction of the other breast to produce a symmetrical appearance; and to provide coverage for prostheses and physical complications at all stages of mastectomy, including lymph edemas. (Insurers have already been complying with these federal requirements by including them in their policy forms and the Department has been requiring such as it approves policy forms. Consequently, this Bill is only a technical change to our statutes to reflect current practice and properly conform our law to the Women's Health and Cancer Rights Act of 1988).
 8. **MATERIAL CHANGE NOTICE:** Two years ago the Insurance Code was amended to require sixty (60) days notice of an insurer's intent to non-renew most commercial insurance contracts. Workers' Compensation was inadvertently not included. This bill adds the notice requirement for workers' compensation.
- We have also added the requirement of a 30-day notice of non-renewal for homeowner and private passenger auto. The bill also requires a minimum of 30 days notice to the insured of a premium increase of more than 10%.

2003 Legislative Proposals



9. **MEWA:** As the health insurance market continues to shrink, the Insurance Department has seen increased activity from unauthorized entities seeking to offer health insurance. This Bill will give the Arkansas Insurance Department more authority to shut down unauthorized entities. Entities will be entitled to request a hearing on a cease and desist order within 30 days. The commissioner may request an injunction or other action from the circuit court. This Bill will also allow the Department to regulate ERISA arrangements to the fullest extent allowed by ERISA. Anyone who knowingly sells an unauthorized insurance product shall be guilty of a felony. Those who sell unauthorized products shall be personally responsible for any damage caused.
10. **NEW KEY MAN:** Key Man insurance has long been a staple of the business world for high-level employees; however, there has been a recent trend by employers to purchase insurance on lower-level employees, often without their knowledge and/or consent. This amendment prevents employers from insuring employees without the employees' consent.
11. **VIATICAL SETTLEMENT ACT:** An Act To Repeal the Viatical Settlements Act in ACA §23-81-501 *et seq. in order to replace it with the existing NAIC model act on viatical settlements*. Proposed bill will replace current viatical settlements act with current NAIC model act, which is more favorable to senior citizens and consumers. The Department has removed those parts of the NAIC model act which relate to investment related activities because such activity is regulated by the Arkansas Securities Department. This proposed bill will keep unique provisions we already have in act related to agent licensing and application filings. Also proposed bill will clarify that there is no insurable interest in the sale and exchange of a viatical contract, to avoid conflicting with our insurable interest statute. (A "Viatical Settlement" is the selling of a life insurance policy by a person chronically ill to a company in exchange for an amount of money which is less than the expected death benefit in the life insurance policy. "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the

cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.)

John Shields Retires



Longtime Arkansas Insurance Department (AID) Life and Health Division Director John Shields retired from his official duties with the Department late last fall. John's insurance career spanned 30 years, 18 of which were spent with the Department, where he used his broad knowledge of insurance matters to assist in local and national insurance initiatives.

John was actively involved in life and health and senior-related insurance issues with the National Association of Insurance Commissioners (NAIC), and was instrumental in implementing the Coordinated Advertising Rate and Form Review Authority (CARFRA).

John, who is a former vice president of a Little Rock domestic insurance company, is also a Chartered Life Underwriter, Academy of Life Underwriting Fellow; and Life Management Institute Fellow. A graduate of the University of Arkansas, John remains an avid Razorback fan and is a past president of the Razorback Club.

"John was a valuable asset to the fine team of professionals we have here at the Department," Commissioner Pickens said. "He will truly be missed."

John was joined by a number of former Arkansas Insurance Commissioners, and industry peers at a retirement party held in his honor.



Mel Heaps Becomes Accredited Financial Examiner (AFE)

A Financial Examiner for the Arkansas Insurance Department, Mel Heaps recently received the distinguished designation of Accredited Financial Examiner. Mel began his career with the Department in the fall of 2000. Prior to joining the Department he worked as a senior premium auditor for a local insurance company.

Mel and his wife Nicole have three children, Nicholas, Kaitlin, and Caleb, who keep Mel busy with soccer coach and Cub Scout Den duties.

"We are very proud of Mel and appreciate his hard work," said Commissioner Pickens. "This accomplishment will benefit insurance consumers throughout the State."



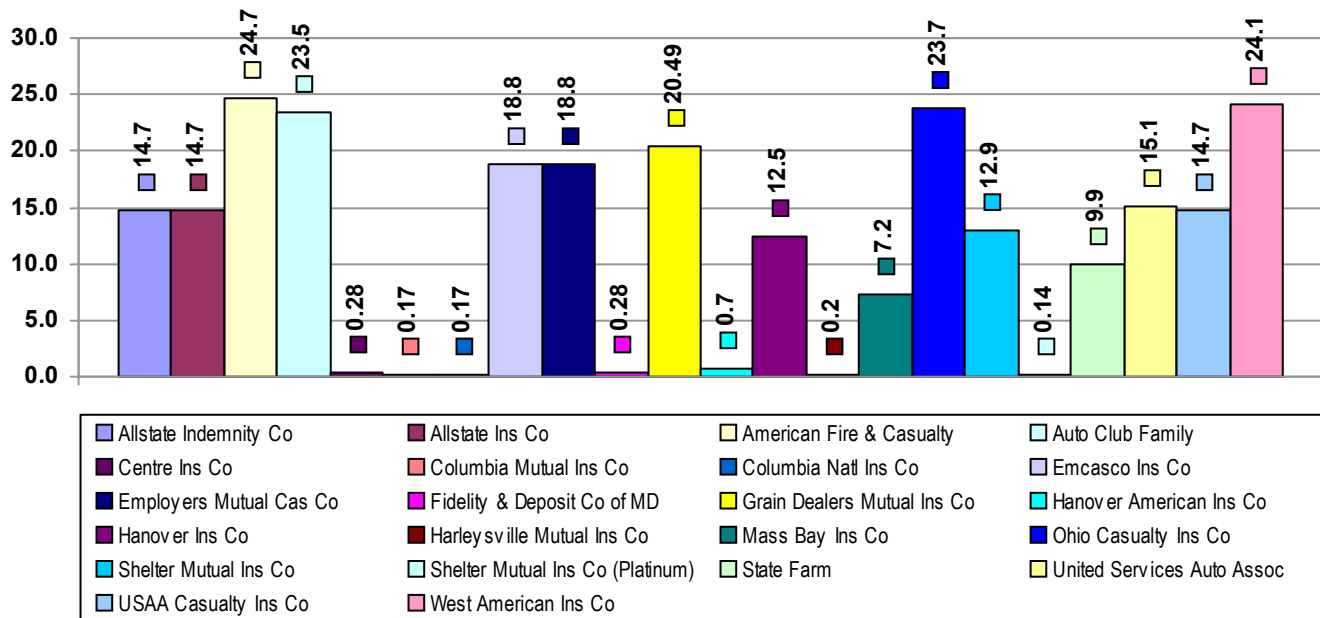
The Rate Report



The following property and casualty rates are provided to you as a service of the Property and Casualty Division of the Arkansas Insurance Department. The rates listed in this report reflect rate increases and decreases that have been filed with the Department from October 1, 2002 through February 1, 2003. The market, not the State, sets the rates in Arkansas. We will utilize this section of the newsletter to keep you informed of rate changes as they occur and are released through the Department.

Homeowners Rate Changes 10/1/02 to 2/1/03

Company	Percent of Increase/Decrease	Effective Dates	
		New Business	Renewals
Allstate Indemnity Company	+14.7	12/02/2002	12/02/2002
Allstate Insurance Company	+14.7	12/02/2002	12/02/2002
American Fire & Casualty	+24.7	10/01/2002	11/21/2002
Auto Club Family	+23.5	12/15/2002	12/15/2002
Centre Insurance Company	+0.28	02/01/2003	02/01/2003
Columbia Mutual Insurance Company	+0.17	12/01/2002	01/01/2003
Columbia National Insurance Company	+0.17	12/01/2002	01/01/2003
Emcasco Insurance Company	+18.8	01/01/2003	01/01/2003
Employer Mutual Casualty Company	+18.8	01/01/2003	01/01/2003
Fidelity & Deposit Company of Maryland	+0.28	02/01/2003	02/01/2003
Grain Dealers Mutual Insurance Company	+20.49	01/01/2003	01/01/2003
Hanover American Insurance Company	+0.7	11/01/2002	11/01/2002
Hanover Insurance Company	+12.5	11/01/2002	11/01/2002
Harleysville Mutual Insurance Company	+0.20	12/22/2002	12/22/2002
Massachusetts Bay Insurance Company	+7.2	11/01/2002	11/01/2002
Ohio Casualty Insurance Company	+23.7	10/01/2002	11/21/2002
Shelter Mutual Insurance Company	+12.9	11/28/2002	12/18/2002
Shelter Mutual Insurance Company (Platinum)	+0.14	11/28/2002	12/18/2002
State Farm	+9.9	12/15/2002	12/15/2002
United Services Automobile Association	+15.1	02/01/2003	02/01/2003
USAA Casualty Insurance Company	+14.7	02/01/2003	02/01/2003
West American Insurance Company	+24.1	10/01/2002	11/21/2002





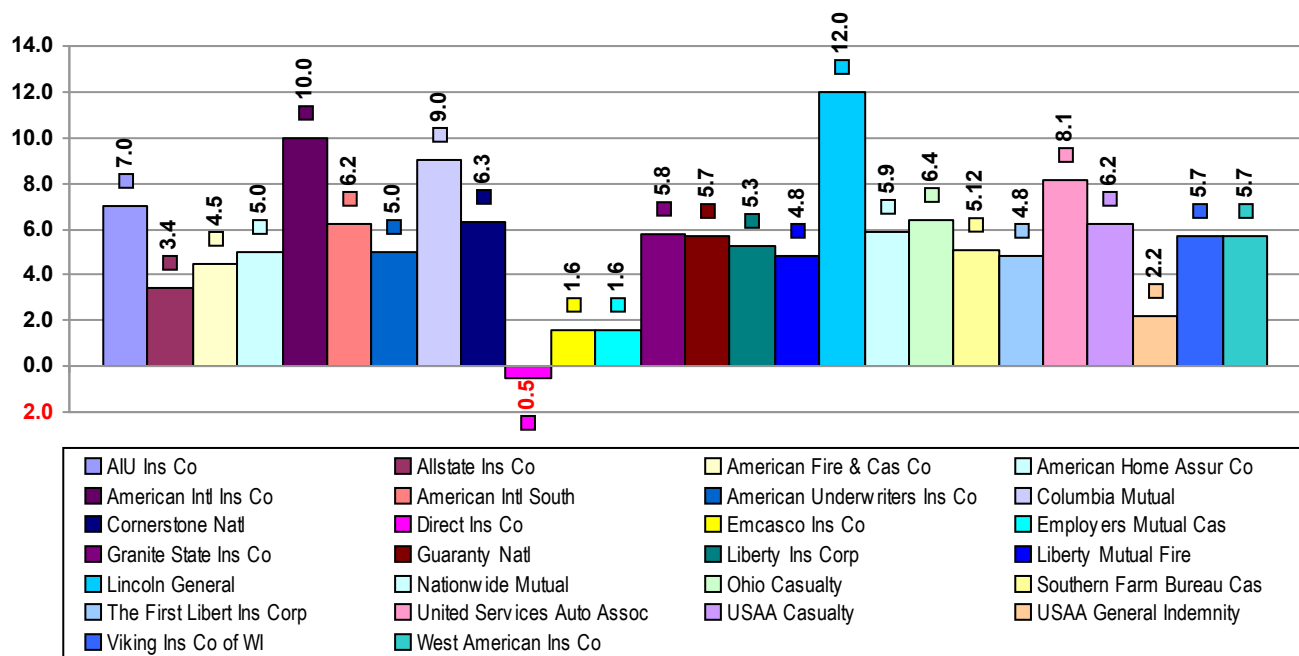
The Rate Report



Personal Auto Rate Changes 10/1/02 to 2/1/03

<i>Company</i>	<i>Percent of Increase/Decrease</i>	<i>Effective Dates</i> <i>New Business</i>	<i>Renewals</i>
AIU Insurance Company	+7.0	11/05/2002	01/04/2003
Allstate Insurance Company	+3.4	12/09/2002	12/09/2002
American Fire & Casualty Company	+4.5	01/01/2003	02/15/2003
American Home Assurance Company	+5.0	11/05/2002	01/04/2003
American International Insurance Company	+10.0	11/05/2002	01/04/2003
American International South	+6.2	10/21/2002	11/21/2002
American Underwriters Insurance Company	+5.0	01/15/2003	01/15/2003
Columbia Mutual	+9.0	11/01/2002	01/01/2003
Cornerstone National*	+6.28	01/01/2003	01/01/2003
Direct Insurance Company	-0.5	01/01/2003	02/15/2003
Emcasco Insurance Company	+1.6	02/01/2003	02/01/2003
Employers Mutual Casualty	+1.6	02/01/2003	02/01/2003
Granite State Insurance Company	+5.8	10/21/2002	11/21/2002
Guaranty National	+5.7	12/16/2002	01/15/2003
Liberty Insurance Corporation	+5.3	01/21/2003	01/21/2003
Liberty Mutual Fire	+4.8	01/21/2003	01/21/2003
Lincoln General	+12.0	10/07/2003	12/07/2002
Nationwide Mutual	+5.9	12/04/2002	12/04/2002
Ohio Casualty	+6.4	01/01/2003	02/15/2002
Southern Farm Bureau Casualty	+5.12	01/01/2003	01/01/2003
The First Liberty Insurance Corporation	+4.8	01/21/2003	01/21/2003
United Services Auto Association	+8.1	01/31/2003	01/31/2003
USAA Casualty	+6.2	01/31/2003	01/31/2003
USAA General Indemnity	+2.2	01/31/2003	01/31/2003
Viking Insurance Company of Wisconsin	+5.7	12/16/2002	01/15/2003
West American Insurance Company	+5.7	01/01/2003	02/15/2003

***Note:** Original printing listed a 12% increase effective 1/1/03. On 3/6/03 the Department received an update from Cornerstone indicating they discovered an error in their calculation process resulting in a correction to 6.28% overall rate increase in lieu of the earlier 12%.





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Mission Statement:

The purpose of the State Insurance Department is to serve and protect the public interest by the equitable enforcement of the state's laws and regulations affecting the insurance industry.

The primary mission of the State Insurance Department shall be consumer protection through insurer solvency and market conduct regulation, and fraud prosecution and deterrence.

*To add or remove your name from our mailing list, please contact Sandy Currington at (501) 371-2620.
You can view The AID Newsletter on the Department's web site at www.state.ar.us/insurance.*